IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.MC.No. 3776 of 2006()

SC.357/2004 of ADDL.SESSIONS COURT, (ADHOC), ERNAKULAM

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PETITIONER:

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1. CHACKO, S/O.MATHAI,
AKKAPARAMBIL VEEDU, ONAKKOOR VILLAGE,
PERIYAPPURAM KARA.

2. BHUVANA CHANDRAN, S/O. NEELAKANDAN,
THURAKKALIL VEEDU, ONAKKOOR.

3. SIVARAJAN, S/O.NEELAKANDAN,
THURAKKALIL VEEDU, ONAKKOOR.

4. BENNY, S/O.VARKEY,
NADIYAKKUZHY VEEDU, (ITTIYACHAN PARAMBIL),
ONAKKOOR.

5. KESAVAN, S/O.NARAYANAN,
MUKALEL VEEDU, ONAKKOOR.

6. SASI, S/O.RAMAKRISHNAN,
NELLIKKUZHIKKATTIL HOUSE, (MOOLAPPARAMBIL),
ONAKKOOR.

7. MADHU, S/O.SOMAN,
NELLIKKUZHIKKATTIL HOUSE,
(MOOLAPPARAMBIL), ONAKKOOR.

8. SOMAN, S/O.KUMARAN,
KUDILIL VEEDU, KAKKAYAM AREA,
ONAKKOOR.

9. SANTHOSH, S/O.NANDANAN,
NELLIKKUZHIKKATTIL HOUSE,
ONAKKOOR.

10. RAJU, S/O.NARAYANAN,
PUTHENPURAYIL VEEDU, ONAKKOOR.

11. SIVAN, S/O.KRISHNAN,
KUBBAPPILKLY VEEDU, ONAKKOOR.

12. REJI, S/O.KOCHU VARKEY,
THODUVAKKUZHI VEEDU, ONAKKOOR.

13. MONOY, S/O.KOCHU VARKEY,
THODUVAKKUZHI VEEDU, ONAKKOOR.

14. SASI @ KUTTAI, S/O.KUNJAPPAN,
KARAMALAYILVEEDU, ONAKKOOR.

15. BINU, S/O.VARGHESE,
KURUTTUKAVU VEEDU, ONAKKOOR KARA.

16. THAMPI, S/O.VARGHESE,
VAZHAKKALA KANDATHIL VEEDU,
ONAKKOOR KARA.

17. BIJU, S/O.VARGHESE,
KADAPLACKAL VEEDU, ONAKKOOR.

18. SKARIA @ KUNJU, S/O.POULOSE,
VATTAKUZHIYIL VEEDU, ONAKKOOR.

19. MATHAI, S/O.SKARIYA,
KULATHA KUZHIYIL, ONAKKOOR.

20. MATHAI, S/O.ULAHANNAN,
VELLIKKAMALAYIL VEEDU, ONAKKOOR.

21. SASI, S/O.KUNJAPPAN,
PAREKKATTIL VEEDU, KAKKAYAM AREA,
ONAKKOOR.

22. XAVIER, S/O.JOSEPH,
ALAPPATTU VEEDU, ONAKKOOR.

BY ADV. SRI. JOHN K. GEORGE
SRI.P.K.VARGHESE
SRI.E.C.BINEESH

RESPONDENTS:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3776 OF 2006

Dated this the 8th day of December, 2006

ORDER

The petitioners are the accused in a prosecution, inter alia, under Sec.307 read with Sec.149 of the IPC. In that case, the Investigating Officer – P.W.39 has been examined. After such examination, the learned Public Prosecutor filed an application to recall P.W.39 and the said application stands allowed under Annexure-III order. The petitioners had also filed Annxure-II petition – Crl.M.P.No.5043/06, to recall as many as 17 witnesses for the purpose of further cross-examination. The short grievance of the petitioners is that though Annexure-III order has been passed, no orders have been passed on their application.

2. I have no hesitation to agree with the learned counsel for the petitioners that Annexure-II petition deserves to be disposed of on merits. The learned Sessions Judge shall pass appropriate orders on Annexure-II application at the earliest – within a period of 10 days from the date on which a copy of

this order is placed before the learned Sessions Judge.

3. The learned counsel for the petitioners prays that examination of P.W.39, under Annexure-III, may be permitted to take place only after the prayer to recall the prosecution witnesses is considered and decided. According to the learned counsel for the petitioners, if the witnesses were recalled subsequent to the further examination of P.W.39, P.W.39 may have to be further recalled again, if necessary, after cross-examination of the witnesses already examined on the side of the prosecution. The learned Sessions Judge must take this into consideration and decide the timing for examination of P.W.39.

4. With the above observations, this Crl.M.C. is allowed in part.

5. Hand over a copy of this order to the learned counsel for the petitioners.

Sd/-

(R. BASANT, JUDGE)

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/true copy/ P.S. To Judge